

THE UNITED STATES DISTRICT COURT

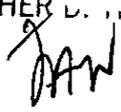
NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

No. 1:92-CR-182-4,5

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

JAN 02 2004

LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

GEORGE W. HIGH, SR. & VIRGINIA C. HIGH,

MOTION TO DISQUALIFY JUDGE

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CASE HISTORY

Mr. and Ms. High were tried by a jury before the Honorable Robert L. Vining, Jr. United States District Judge. On October 13, 1993, the jury returned guilty verdicts against Mr. and Ms. High in count one (conspiracy to distribute cocaine); count thirteen (conspiracy to launder drug proceeds, to structure currency transactions and to defraud the United States) counts three and nine (weapons violations); and count fourteen (structuring currency transactions). The jury returned Guilty verdicts against Ms. High in count one; count thirteen; counts sixteen, nineteen, twenty-one and twenty-two (structuring currency transactions) and counts seventeen, eighteen, twenty, twenty-three and twenty-four (money laundering) (R2-348; R5-349).

On January 20, 1994, Mr. High was sentenced to 97 months on both counts one and nine, to Run concurrent. and to concurrent sentences of 60 months on both counts Three and thirteen, which were to run concurrent with the sentences on counts one and nine. The court imposed a term of five years of supervised release to follow the term of imprisonment and a special assessment of \$200.00. (R24-11).

The court sentenced Ms. High to 97 months each on counts 1, 17, 18, 20, 23 and 24, all to run concurrently, and 60 months on count 13, to run Concurrent with the other sentences (R23-9). The court also ordered Ms. High to pay a \$350.00 special assessment and to serve a five-year period on Supervised release following her sentence of incarceration (R23-10).

AT SENTENCING

Prior to sentencing , the probation officer prepared a Pre-sentencing-Report, (page 20 # 17 as follows: Since the defendant's Involvement in the conspiracies outlined in Count's One and Thirteen of the indictment involves activities related to money laundering, these two counts will be treated as money laundering counts, pursuant to U.S.S.G. §1B1.2(a).

On January 20, 1994, (sentencing transcript, 15 pages).

THE COURT: (page 8, lines 17-19) The court adopts the factual statements and guideline applications made in the presentence investigation report to which there has been no objections filed. George and Virginia High was found guilty on October 13, 1993, and The Supreme Courts decision in Ratzlaf v United States, 510 U.S. 135 was on January 11, 1994, and the High's were sentenced on January 20, 1994. counts 1 and 13 should have been dismissed, because under Ratzlaf, George and Virginia Highs sentences were imposed unlawfully and in

violation of the United States Constitution. Judge Vining was bias and prejudice against the highs at sentencing, as he should have dismissed all counts, and Judge Vining had personal knowledge of disputed evidentiary facts concerning proceedings, as per ratzlif.

ON APPEAL

On July 21, 1997, in a PER CURIAM opinion, the 11th Circuit Court of Appeals affirmed the Highs' conviction on Count One , and reverse the appellants' convictions on Count Thirteen 117 F3d. 464 (11th Cir. 1997).

Because the Highs were sentenced under the money laundering statues

On Count One, that conviction was also reversed, inadverately, and the Appellate court concluded with:

CONCLUSION

Because the evidence was sufficient, we affirm the Highs' convictions on Count One. Because we cannot determine whether the jury convicted the appellants on a legally sufficient basis on Count Thirteen, we reverse the convictions of the appellants on that count and remand for further proceedings consistent with this opinion....

When a case has been decided by the Court of Appeals and remanded to the district court, it is considered as finally settled. The district court is bound By the decree as the law of the case, and must carry it into execution. The Highs prevailed in the Appellate Court, and the district court did not give full effect to the

mandate, and adamantly refused to carry out the judgment of the 11th Circuit Court of appeals and this was a clear abuse of discretion and an usurpation of judicial power...

United States V CERCEDA,
Nos. 94-5017, 95-4610 to 95-4613, 95-4617, 95-4618, 95-4626, 95-4628 to 95-4635, 95-4659, 95-5244, 95-5298, 95-5369, 95-5566, 96-4584, 96-5043 and 96-5067 April 23, 1998. (11th Cir.)

The Need for Recusal Section 455(a) states: "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard under § 455(a) is an objective one, focusing on a hypothetical reasonable observer. The test of whether to recuse is one of objective reasonableness, that is, whether "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Torkington*, 874 F.2d 1441, 1446 (11th Cir.1989); *see also Liljeberg v. Health Servs. Acquisition Corp.*, [486 U.S. 847, 859-60](#), 108 S.Ct. 2194, 2202-03, 100 L.Ed.2d 855 (1988). A judge is under an "affirmative, self-enforcing obligation to recuse himself *sua sponte* whenever the proper grounds exist," and is required to resolve any doubts in favor of disqualification. *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir.1989).

On June 3, 1992, Arraignment held for Sims Jinks, Elmer Adkins Jr. and Willie Lawrence Wyatt, Case assigned to Judge Horace T. Ward.

On July 22, 1992, Arraignment held for George High and Virginia C. High, Case assigned to Judge Horace T. Ward.

On August 26, 1992, The case was reassigned to Judge Robert L. vining Jr. The Highs avers that this was a case of prosecutorial manipulation of the Assignment process. The above named 5 defendants cases were initially assigned to Judge Horace T. Ward, (a black Judge).

The government would later obtained a second superseding indictment against the defendants. The case should have been assigned to the judge who was assigned the case of the defendant's whose name appears first on the superseding indictment. Sims Jinks name appeared first on the first indictment, the superseding Indictment and... the current Docket Sheet, dated 12/17/03 (see # 1) is titled USA v. Jinks, et al. The Highs contended that the government manipulated the order the defendants' names on the superseding indictment to obtain the assignment of the cases to a particular judge (Judge Robert L. Vining Jr., (white), which gave the prosecution a subtle advantage. The Highs were deprived of their right under the Fifth amendment's Due Process Clause to an impartial method of assigning cases to judges and that the prosecution deprived the defendant of that right by manipulating the assignment of the defendant's case, and George and Virginia High suffered "grave prejudice" and a "Gross miscarriage of justice".

Murray v Scott, 99-12194, (11th Cit. June 13, 2001), .
...Plaintiff says that these facts implicate the federal recusal statute. 28 U.S.C. §455. Section 455(b) requires disqualification under certain circumstances, for example, when a judge has "personal knowledge of disputed evidentiary facts," §455(b)(1) . . . concerning the proceeding...Under this provision, recusal is mandatory. In such situations, "the potential for conflicts of interest are readily apparent." State of Alabama, 828 F.2d at 1541.....Congress has directed federal judges to recuse themselves in certain situations, and we accept that guidance. Judges must not recuse themselves for imaginary reasons; judge shopping should not be encouraged. Still, federal judges must early and often consider potential conflicts that may arise in a case and, in close cases, must err on the side of recusal.⁸ And if a judge must step aside, it is better to do it sooner instead of later.

CONCLUSION

Since jurisdictional error implicates a court's power to adjudicate the matter before it, such error can never be waived.

One type of claim that has historically been recognized as fundamental, and for which collateral relief has accordingly been available, is that of "jurisdictional" error. See, e.g., United States v. Addonizio, [442 U.S. 178, 185](#) (1979) ("Habeas corpus has long been available to attack convictions and sentences entered by a court without jurisdiction."); Keel v. United States, 585 F.2d 110, 114 (5th Cir. 1978) (en banc) (distinguishing, in challenge to conviction resting on guilty plea, "jurisdictional" errors from those which may not be raised via collateral attack). Since jurisdictional error implicates a court's power to adjudicate the matter before it, such error can never be waived by parties to litigation. See Louisville & Nashville Railroad Co. v. Mottley, [211 U.S. 149, 152](#) (1908) (ordering case dismissed for lack of jurisdiction despite absence of objection from either party to trial court's previous adjudication of merits). In other words, the doctrine of procedural default does not apply.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this the 2nd day of January, 2004

Virginia C. High

George W. High, Sr, Pro Se

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing

MOTION TO DISQUALIFY JUDGE upon:

William S. Duffey, U.S. Attorney
Northern District of Georgia
1800 U.S. Courthouse
75 Spring St. S.W.
Atlanta, Ga. 30303

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400 Richard B Russell Bldg.
75 Spring St. S.W.
Atlanta, Ga. 30335

By depositing the same in the United States Mail with adequate postage

Affixed thereto to ensure delivery to same.

This the 2nd day of January, 2004

George W. High, Sr., Pro Se